

**ADU PROGRAM RIDER TO RESIDENTIAL CONTRACT OF SALE**

**IN CASES WHERE THE ADU COVENANTS ARE RECORDED**

**ON OR AFTER JULY 2, 2002**

**In practice, exhibits typically would include:**

**Copy of the ADU Covenants  
Purchaser and Seller Certification**

## Affordable Dwelling Unit (ADU) Program Rider to Residential Contract of Sale

This Rider is made on \_\_\_\_\_, 20\_\_\_\_ to that certain Sales contract (“Contract”) dated \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_ (“Purchaser”) and \_\_\_\_\_ (“Seller”) for the purchase and sale of the property (“Property”) having an address of \_\_\_\_\_, Virginia, \_\_\_\_\_ and being more particularly described in the Contract.

Purchaser and Seller mutually agree, any other provisions of the Contract to the contrary notwithstanding, that the following provisions are hereby incorporated into the Contract:

- Purchase Price.** The purchase price (the "Purchase Price") of the Property is \$\_\_\_\_\_. The Purchase Price has been established in accordance with the provisions of the Fairfax County Affordable Dwelling Unit Program as set forth in Part 8, Article 2 of the Fairfax County Zoning Ordinance, and regulations established with respect thereto, as the same may be amended from time to time (such ordinance provisions and regulations are collectively referred to as the “Ordinance.”).
- Notice of Principal Residence.** Purchaser hereby acknowledges and agrees that Purchaser will occupy the Property as Purchaser's principal residence in accordance with the provisions of the Ordinance.
- Compliance with Affordable Dwelling Unit Ordinance.** It is agreed and understood that the Property is subject to the terms and conditions of the Ordinance, including, without limitation, price controls, occupancy requirements and financing and sales restrictions applicable to the Property. Pursuant to the Fairfax County Affordable Dwelling Unit Program, the Property is subject to a Declaration of Affordable Dwelling Units Covenants recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ (the “ADU Covenants”), a copy of which is attached hereto as Exhibit A. In addition, it is acknowledged and understood by Purchaser and Seller that the ADU Covenants state that the Property is subject to all the provisions of the Ordinance, as amended from time to time. In confirmation of the foregoing, in connection with the execution of the Contract, Seller and Purchaser shall execute the Purchaser and Seller Certification in the form as set forth on Exhibit B, attached hereto and cause it to be delivered in fully executed form to the ADU Program Coordinator at the Fairfax County Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030 within three (3) business days after ratification of the Contract.
- Deed Provisions Required to be Included in Deed to Purchaser from Seller.** Purchaser and Seller acknowledge and agree that each of them has read and understood the following deed provision text which is to be included in the deed conveying the Property to Purchaser and to which the Property will then be subject. Purchaser and

Seller agree that the following text shall be included in the deed conveying the Property to Purchaser from Seller pursuant to this Contract:

The property hereby conveyed is expressly subject to the Declaration of Affordable Dwelling Unit Covenants recorded among the land records of Fairfax County, Virginia in Deed Book \_\_\_\_\_ at page \_\_\_\_\_ (referred to herein as the “ADU Covenants”) pursuant to the Affordable Dwelling Unit Program as set forth in Part 8 of Article 2 of the Fairfax County Zoning Ordinance and the regulations established with respect thereto, as the same may be amended from time to time (collectively such ordinance and regulations as amended from time to time are referred to herein as the “Ordinance”).

AMONG OTHER THINGS, THE ADU COVENANTS AND THE ORDINANCE INCLUDE RESTRICTIONS ON FUTURE TRANSFERS OF THE PROPERTY HEREBY CONVEYED, PROVIDE THAT THE TOTAL AGGREGATE AMOUNT OF INDEBTEDNESS THAT MAY BE SECURED BY THE PROPERTY HEREBY CONVEYED SHALL NOT EXCEED THE PURCHASE PRICE FOR THE PROPERTY HEREBY CONVEYED, AS ADJUSTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2-812(4) OF THE ORDINANCE, AND PROVIDE THAT OTHER TERMS AND CONDITIONS APPLY, INCLUDING, BUT NOT LIMITED TO, A RIGHT OF THE FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY OR A NONPROFIT AGENCY DESIGNATED BY THE COUNTY EXECUTIVE OF FAIRFAX COUNTY, VIRGINIA TO ACQUIRE THE PROPERTY HEREBY CONVEYED ON CERTAIN TERMS IN THE EVENT OF A PENDING FORECLOSURE SALE OF SUCH PROPERTY.

5. **Purchaser to Advise Lenders of ADU Program Requirements.** Purchaser shall provide each lender to which Purchaser applies for financing of the purchase of the Property a complete copy of the Contract including this ADU Program Rider and advise each lender that the ADU Covenants include requirements with which any financing documents provided must comply.

6. **No Liability of ADU Program (as defined in this paragraph).** The Purchaser and Seller each expressly acknowledge and agree that the Board of Supervisors of Fairfax County, the Fairfax County Redevelopment and Housing Authority and the Fairfax County Department of Housing and Community Development and all of the employees, agents, contractors, representatives and counsel of each of them (collectively and each individually referred to in this paragraph 6 as the “ADU Program”) shall have no liability to either party and are hereby unconditionally and forever released from any and all liability whatever in connection with the

purchase and sale of the Property. Purchaser and Seller expressly acknowledge that each of them intends the ADU Program to be the beneficiary of such release.

Witness our signatures and seals:

SELLER:

\_\_\_\_\_  
*Date      Signature*

\_\_\_\_\_  
*Date      Signature*

PURCHASER:

\_\_\_\_\_  
*Date      Signature*

\_\_\_\_\_  
*Date      Signature*

**EXHIBIT A to ADU Program Rider to Residential Contract of Sale**

Recorded ADU Covenants



**FAIRFAX COUNTY**  
**AFFORDABLE DWELLING UNIT PROGRAM**  
**PURCHASER AND SELLER CERTIFICATION FORM**

Department of Housing and Community Development, 3700 Pender Drive, Suite 100, Fairfax, VA 22030-7442

**Instructions:**     **Purchaser(s) must complete Block 1, read Block 4 and affix their signatures(s).**  
                          **Builder/Developer (Seller) must complete Blocks 2, 3 and affix their signature in Block 5.**

**1. PURCHASER**

Name \_\_\_\_\_

Present Address \_\_\_\_\_

\_\_\_\_\_

**2. SELLER/DEVELOPER**

Name \_\_\_\_\_

Present Address \_\_\_\_\_

\_\_\_\_\_

**3. AFFORDABLE DWELLING UNIT ADDRESS**

Number                      Street    City                                      State                                      Zip

Name of Subdivision \_\_\_\_\_ Lot# \_\_\_\_\_

Date of Purchase \_\_\_\_\_ Sales Price \_\_\_\_\_

**4. Special provisions (affecting the home referenced in block 3) are included when a home is purchased through the First-Time Homebuyers Program also known as the Affordable Dwelling Unit Program). I/We understand that for Affordable Dwelling Units sold (new units or resales) on or after July 2, 2002, the Declaration of Affordable Dwelling Unit (ADU) Covenants recorded in the land records for the home identified above and the new provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, as amended requires the following, among other things:**

- a. If I offer the home for sale, it must first be offered exclusively to First-Time Homebuyers Program applicants for sixty (60) days.
- b. The home may be resold anytime during the control period. For ADU's first sold after March 31, 1998, the control period is for fifteen (15) years from the date of initial sale. ADU's first sold earlier initially had a fifty (50) year control period, which at the election

of the current owner may have been reduced to the fifteen (15) year control period and if desired can still be reduced to the fifteen (15) year period at any time by recordation of proper amendments to the ADU covenants. Upon recordation of such ADU amendments, the (15) year period will be deemed to have commenced on March 31, 1998. The FCRHA has first right of refusal after 15 years for units purchased after July 2, 2002. The amount of the sales price cannot exceed the original purchase price, plus annual increases in the Consumer Price Index (CPI) during the period the home is owned. However, sales prices may be adjusted for certain types of improvements made to the home by the owner, such as finishing a basement or adding a deck or bathroom. (I/We will consult the Department of Housing and Community Development for details.) At the initial sale that occurs after the control period the unit shall first be offered exclusively to the FCRHA for a period of sixty days. The unit can then be sold for market price; however at closing, the excess amount realized through the sale over the applicable adjusted home price is evenly divided between the owner (seller) and the Fairfax County Housing Trust Fund.

- c. The home must be occupied by the purchaser(s) as their primary residence. The home cannot be rented. Each year I/We must sign, have notarized, and deliver to the Fairfax County Redevelopment and Housing Authority (FCRHA) a Certification of Occupancy.
- d. The home is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, as amended from time to time. Those provisions were amended effective July 2, 2002. The new provisions affecting the ADU Covenants shall apply to units initially sold and resales of existing units after July 2, 2002, and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in the recorded covenants. New provisions include, but are not limited to, the following:

***New Provision: One Covenant.*** A Declaration of ADU Covenants will be recorded with the subdivision plat or condominium declaration for new developments that file on or after July 2, 2002. There will no longer be an individual unit Declaration of ADU Covenants recorded at the time of an individual new unit sale or resale of an existing ADU unit. The deed to the unit will refer to the applicable Declaration of ADU Covenants and provisions as amended by the Fairfax County Zoning Ordinance.

***New Provision: Limits on Secured Financing.*** The amount of indebtedness that I/ We may secure by an interest in the ADU is limited only to that ADU's control price, as provided for by the ADU Program and established by the Fairfax County Department of Housing and Community Development. Any indebtedness beyond the control price is not secured by any interest in the ADU.

***New Provision: Times for Notice of Default, Right to Cure, and Notice of Foreclosure, and the Addition of Right to Acquire.*** The lender must give a notice of default to the County Executive and the Fairfax County Redevelopment and Housing Authority (FCRHA) and notice of pending foreclosure. The FCRHA has 90 days to cure the default (Right to Cure) and/or 90 days to exercise the right to acquire (Right to Acquire) the unit upon which foreclosure is pending. These notices can run simultaneously. The acquisition of the ADU by the FCRHA can be prior to or at the foreclosure sale. The FCRHA's



Right to Acquire the ADU is for a price not to exceed the control price and reasonable and customary costs and expenses (Outstanding First Trust Debt). If the FCRHA elects not to exercise its Right to Acquire, a non-profit organization designated by the County Executive may elect to acquire the ADU being foreclosed upon for a price not to exceed Outstanding First Trust Debt.

***New Provision: Eligible Lender.*** Only a foreclosure by an Eligible Lender, as defined below, after it has given the Right to Cure and the Right to Acquire noted above will cause the ADU covenants to be released. An Eligible Lender is an institutional lender holding a first priority purchase money deed of trust on an individual ADU or a refinancing of an institutionally financed purchase money deed of trust by an institutional lender provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing.

***New Provision: Division of Foreclosure Proceeds.*** If the ADU in foreclosure proceedings is not acquired by the FCRHA, or by the County Executive's designated non-profit organization, and is sold at foreclosure, then one-half (1/2) of the sales proceeds over the amount of the Outstanding First Trust Debt is required to be paid to the Fairfax County Housing Trust Fund.

I/We the undersigned as the Purchaser(s) of the Affordable Dwelling Unit (ADU) identified above acknowledge receipt of a copy of the recorded Declaration of Affordable Dwelling Unit Covenants for the home and a copy of the required deed provisions applicable to the home upon its conveyance to me/us provided for by the Affordable Dwelling Unit Program, as amended effective July 2, 2002. I/We acknowledge that we have read and understand these documents.

\_\_\_\_\_  
Purchaser's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Co-Purchaser's Signature

\_\_\_\_\_  
Date

Social Security No. \_\_\_\_\_

Social Security No. \_\_\_\_\_

**5. I/We the undersigned as the Seller(s) of the Affordable Dwelling Unit referenced above certify that to the best of our knowledge purchasers meet the qualifications as first-time homebuyers and are income eligible to purchase the ADU. We further certify that the sales price in block 3 is the sales price approved under the program guidelines.**

\_\_\_\_\_  
Seller/ Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Co-Owner Signature

\_\_\_\_\_  
Date